



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0387; FRL-9966-34-Region 4]

Air Plan Approval; SC: Miscellaneous Revisions to Multiple Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve changes to the South Carolina State Implementation Plan (SIP) to revise several miscellaneous rules, covering definitions, source tests, credible evidence, open burning, air pollution episodes, and fugitive particulate matter. EPA is approving portions of SIP revisions submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC) on the following dates: July 18, 2011, June 17, 2013, April 10, 2014, August 8, 2014, January 20, 2016, and July 27, 2016. These actions are being taken pursuant to the Clean Air Act.

DATES: This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-

0387 at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Taking?

On July 18, 2011, June 17, 2013, April 10, 2014, August 8, 2014, January 20, 2016, and July 27, 2016, SC DHEC submitted SIP revisions to EPA for approval that involve changes to South Carolina's SIP regulations to add definitions, make administrative and clarifying amendments, and correct typographical errors. These SIP submittals make changes to several air

quality rules in South Carolina Code of Regulations Annotated (S.C. Code Ann. Regs.). The changes EPA is approving into the SIP in this action modify portions of Regulation 61-62.1 “Definitions and General Requirements” at Section I - “Definitions,” Regulation 61-62.1, Section IV - “Source Tests,” Regulation 61-62.1, Section V - “Credible Evidence.” EPA is also approving changes to Regulation 61-62.2 - “Prohibition of Open Burning,” Regulation 61-62.3 - “Air Pollution Episodes” at Section I - “Episode Criteria” and Regulation 61-62.6 - “Control of Fugitive Particulate Matter” at Section I - “Control of Fugitive Particulate Matter in Non-Attainment Areas” and Section III - “Control of Fugitive Particulate Matter Statewide.”

At this time, EPA is not acting on the changes detailed in Table 1 below. EPA will address all remaining changes to the South Carolina SIP as listed above in a separate action.

Table 1. Other Portions of South Carolina Submittals.

Submittal	Regulation	Status
July 18, 2011	Regulation 61-62.1, Section II	EPA will evaluate in a separate action.
July 18, 2011	Regulation 61-62.5, Standard No. 1	EPA will evaluate in a separate action.
July 18, 2011	Regulation 61-62.5, Standard No. 2	Approved April 3, 2013 (78 FR 19994).
July 18, 2011	Regulation 61-62.5, Standard No. 4	EPA will evaluate in a separate action.
July 18, 2011	Regulation 61-62.5, Standard No. 6	Not part of the SIP. ¹
June 17, 2013	Regulation 61-62.1, Section II	EPA will evaluate in a separate action.
June 17, 2013	Regulation 61-62.5, Standard No. 4	EPA will evaluate in a separate action.

¹ In its July 18, 2011, submittal, South Carolina is removing and reserving its program for setting alternative emission limits at Regulation 61-62.5, Standard No. 6 “Alternative Emission Limitation Options (Bubble).” This change is not presently before EPA because we rescinded the original approval of this regulation and disapproved a further revision to the regulation on March 8, 1995 (60 FR 12700). The 1995 action disapproving a SIP revision and rescinding approval of the adoption of the regulation into the SIP was based on EPA’s analysis that the rule did not meet EPA’s Emissions Trading Policy Statement, Economic Incentive Program rules, nor the CAA amendments of 1990, and a March 24, 1994, request for disapproval from SC DHEC. Therefore, Regulation 61-62.5, Standard No. 6 is no longer part of the federally approved SIP, and this revision to remove and reserve the existing regulation is not before EPA for consideration. However, on May 7, 2002, EPA inadvertently approved a revision to Regulation 61-62.5, Standard No. 6 to correct typographical errors (67 FR 30594). This action was done in error since the original adoption of the Regulation was rescinded on March 8, 1995 (60 FR 12700). EPA will address the error and the incorporation by reference of Regulation 61-62.5, Standard No. 6 at 40 CFR 52.2120(c) in another action.

June 17, 2013	Regulation 61-62.5, Standard No. 5	EPA will evaluate in a separate action.
April 10, 2014	Regulation 61-62.5, Standard No. 7	EPA will evaluate in a separate action.
August 8, 2014	Regulation 61-62.1, Section II	EPA will evaluate in a separate action.
August 8, 2014	Regulation 61-62.1, Section III	Approved June 12, 2015 (80 FR 33413) and May 31, 2017 (82 FR 24851).
August 8, 2014	Regulation 61-62.5, Standard No. 1	EPA will evaluate in a separate action.
August 8, 2014	Regulation 61-62.5, Standard No. 4	Approved April 3, 2013 (78 FR 19994).
January 20, 2016	Regulation 61-62.1, Section II	EPA will evaluate in a separate action.
January 20, 2016	Regulation 61-62.5, Standard No. 5	EPA will evaluate in a separate action.
January 20, 2016	Regulation 61-62.5, Standard No. 7.1	EPA will evaluate in a separate action.
July 27, 2016	Regulation 61-62.1, Section II	EPA will evaluate in a separate action.
July 27, 2016	Regulation 61-62.5, Standard No. 4	EPA will evaluate in a separate action.
July 27, 2016	Regulation 61-62.5, Standard No. 5.2	EPA will evaluate in a separate action.

II. Analysis of South Carolina's Submittals

A. Regulation 61-62.1, Section I - "Definitions"

South Carolina is amending its list of applicable definitions related to the regulation of air quality at Regulation 61-62.1, Section I - "Definitions." The July 18, 2011, submittal makes several changes to the definitions as follows: 1) adds a definition for "CAA [Clean Air Act];" 2) adds definitions for "PM_{2.5}," or fine particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, and "PM_{2.5} emissions;" 3) revises the definition of "fugitive emissions" to match the federal definition at 40 CFR 51.165(a)(1)(ix), 40 CFR 51.166(b)(20), and 40 CFR 52.21(b)(20); and 4) makes other clarifying and administrative edits to definitions throughout the Section, including renumbering. The June 17, 2013, submittal further revises the definitions to make several administrative edits only.

The April 10, 2014, submittal makes one revision to the definitions at Regulation 61-

62.1, Section I.94. - “Volatile Organic Compound (VOC),” to add a compound to the list of compounds determined to have negligible photochemical reactivity and therefore exempted from being considered a VOC, consistent with the federal definition. This revision in the April 10, 2014, submittal is superseded by another revision to the definition of VOC at I.94. in the August 8, 2014, submittal. This submittal changes the format of the definition of VOC at I.99., renumbered from I.94., to incorporate by reference the list of compounds exempted from the federal definition by making an explicit reference to the federal definition at 40 CFR 51.100(s). The August 8, 2014, submittal goes on to revise Section I by: 1) adding definitions for “Code of Federal Regulations (CFR),” “NAICS [North American Industrial Classification System] Code,” and “SIC [Standard Industrial Classification] Code;” and 2) making administrative changes throughout.

Finally, the July 27, 2016, submittal makes subsequent revisions to Section I to add the definition of “emission” and makes administrative edits throughout. EPA has reviewed the changes made to South Carolina’s definitions and is approving the aforementioned changes to Regulation 61-62.1, Section I into the SIP pursuant to CAA section 110.

B. Regulation 61-62.1, Section IV - “Source Tests”

South Carolina is amending its rules covering source testing at Regulation 61-62.1, Section IV - “Source Tests.” Federal implementing regulations at 40 CFR 51.212 - “Testing, inspection, enforcement, and complaints,” require, among other things, that the SIP must provide for “periodic testing and inspection of stationary sources.”

The June 17, 2013, submittal revises the rule to make an administrative edit only. The August 8, 2014, submittal further revises the rule as follows: 1) adds an additional requirement

for site-specific test plans to account for procedures for obtaining, analyzing, and reporting source test audit samples and results; 2) adds language to provide more prescriptive requirements for notifications of testing; 3) adds language to specify that where federal regulation requires specific certification for conducting source tests, the individuals conducting the tests will meet that requirement; 4) removes language stating SC DHEC would provide audit samples to sources for required audits; 5) adds language stating that sources must purchase samples from an audit sample provider where commercially available, and including procedures for the source audits, consistent with federal rulemakings on stationary source auditing²; 6) adds language to specify additional information required for the required source test report; and 7) makes administrative changes throughout the Section.

EPA has reviewed the changes made to South Carolina's rules for source testing and is approving the aforementioned changes to Regulation 61-62.1, Section IV into the SIP pursuant to CAA section 110.

C. Regulation 61-62.1, Section V - "Credible Evidence"

South Carolina is making a minor change to its rules covering credible evidence at Regulation 61-62.1, Section IV - "Source Tests." Federal implementing regulations at 40 CFR 51.212 - "Testing, inspection, enforcement, and complaints," require, among other things, that the SIP must not "preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed." SC DHEC's SIP-approved provisions at Regulation 61-62.1, Standard V clarify

² See EPA rulemakings on September 13, 2010 (75 FR 55636) and March 28, 2011 (76 FR 17288) for more details.

State authority for enforcement and compliance certification and asserts that credible evidence is data that may be used to determine compliance or noncompliance with applicable emission limits.

The August 8, 2014, submittal revises the regulation to make an administrative edit for consistency in internal citations only. EPA has reviewed the changes made to South Carolina's rules for credible evidence and is approving the aforementioned change to Regulation 61-62.1, Section V into the SIP pursuant to CAA section 110.

D. Regulation 61-62.2 - "Prohibition of Open Burning"

South Carolina is making a minor change to its rules covering open burning at Regulation 61-62.2 - "Prohibition of Open Burning." South Carolina's SIP-approved regulation prohibits open burning except in limited circumstances. The April 10, 2014, submittal revises the regulation to make an administrative edit to a referenced manual only. EPA has reviewed the changes made to South Carolina's rules for open burning and is approving the aforementioned change to Regulation 61-62.2 into the SIP pursuant to CAA section 110.

E. Regulation 61-62.3 - "Air Pollution Episodes"

South Carolina is making minor changes to its rules covering air pollution episodes at Regulation 61-62.3 - "Air Pollution Episodes." South Carolina's SIP-approved regulation defines classifications of high air pollution for public notification and outlines emission reduction plans corresponding to the different classifications. The July 18, 2011 and June 17, 2013, submittals revise the regulation at Section I - "Episode Criteria" to make administrative edits to formatting and correct a typographical error only. EPA has reviewed the changes made to South Carolina's rules for air pollution episodes and is approving the aforementioned change

to Regulation 61-62.3 into the SIP pursuant to CAA section 110.

F. Regulation 61-62.6 - “Control of Fugitive Particulate Matter”

South Carolina is making minor changes to its rules covering fugitive particulate matter at Regulation 61-62.6 - “Control of Fugitive Particulate Matter.” South Carolina’s SIP-approved regulation describes procedures for properly controlling the release of fugitive particulate matter in nonattainment areas for particulate matter-related standards, in areas with ambient air quality concentrations at or near primary standards, and generally applicable to all areas in the state. The April 10, 2014 submittal makes changes to Section I - “Control of Fugitive Particulate Matter in Non-Attainment Areas” and Section III - “Control of Fugitive Particulate Matter Statewide” to make administrative edits only. The January 20, 2016 submittal makes a subsequent administrative edit to Section I - “Control of Fugitive Particulate Matter in Non-Attainment Areas” only. EPA has reviewed the changes made to South Carolina’s rules for controlling fugitive particulate matter and is approving the aforementioned change to Regulation 61-62.6 into the SIP pursuant to CAA section 110.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the following South Carolina Regulations: Regulation 61-62.1, Section I - “Definitions,” effective June 24, 2016, which revises definitions applicable to the SIP; Regulation 61-62.1, Section IV - “Source Tests,” effective June 27, 2014, which revises requirements for stationary source testing; Regulation 61-62.1, Section V - “Credible Evidence,” effective June 27, 2014,

which revises formatting for consistency; Regulation 61-62.2 - “Prohibition of Open Burning,” effective December 27, 2013, which revises formatting for consistency; Regulation 61-62.3, Section I - “Episode Criteria,” effective April 26, 2013, which makes administrative edits to regulations prescribing air quality episodes; Regulation 61-62.6, Section I - “Control of Fugitive Particulate Matter in Non-Attainment Areas,” effective November 27, 2015, which revises formatting; and Regulation 61-62.6, Section III - “Control of Fugitive Particulate Matter Statewide,” effective December 27, 2013, which makes administrative language changes for consistency. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.³ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Final Action

EPA is approving the aforementioned changes to the South Carolina SIP, submitted on July 18, 2011, June 17, 2013, April 10, 2014, August 8, 2014, January 20, 2016, and July 27, 2016 because they are consistent with the CAA and federal regulations. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal

³ 62 FR 27968 (May 22, 1997).

Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this direct final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte Area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days

from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 4, 2017.

V. Anne Heard

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP--South Carolina

2. Section 52.2120(c) is amended by:

A. Under Regulation No. 62.1 revise the entries for “Section I,” “Section IV,” and “Section V,”

B. Revise Regulation No. 62.2,

C. Under Regulation No. 62.3, revise the entry for “Section I,” and

D. Under Regulation No. 62.6, revise “Section I” and “Section III”.

The revisions read as follows:

§ 52.2120 Identification of plan.

* * * *

(c) * * *

Air Pollution Control Regulations for South Carolina

State citation	Title/subject	State effective date	EPA approval date	Federal Register Notice
**	**	*	*	*
Section I	Definitions	6/24/2016	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]
**	**	*	*	*

Section IV	Source Tests	6/27/2014	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]
**	**	*	*	*
Section V	Credible Evidence	6/27/2014	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]
Regulation No. 62.2	Prohibition of Open Burning	12/27/2013	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]
**	**	*	*	*
Section I	Episode Criteria	4/26/2013	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]
**	**	*	*	*
Section I	Control of Fugitive Particulate Matter in Non-Attainment Areas	11/27/2015	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]
**	**	*	*	*
Section III	Control of Fugitive Particulate Matter Statewide	12/27/2013	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]
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[FR Doc. 2017-17240 Filed: 8/18/2017 8:45 am; Publication Date: 8/21/2017]